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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,645	09/30/2003	Victor T. Massey	081589-0303266	1139

909 7590 11/29/2006

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/673,645	MASSEY, VICTOR T.	
	Examiner	Art Unit	
	Chapman E. Jeanette	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 13-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/30/2003</u> .   | 6) <input type="checkbox"/> Other: _____                          |

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In the response filed 9/11/06 applicant elected claims 1-12 or Group I with traverse. Applicant argues that all of the inventions should be grouped or examined together because the inventions are not independent or distinct and the search would not be a serious burden on the examiner.

The examiner responds that the spacer may be used between any structural elements where a space is required; for instance the same may be used at the end of studs inserted in a channel to vary the height of the studs. The spacer may be simply classified as a shim or wedge not requiring the search for the jamb, headers, sills and mullions. The header search is certainly not needed in a search directed to a spacer. Hence claims 13-31 have been withdrawn

*35 USC 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headrick (5611173) in view of Brinker (3811238). Brinker discloses a door jamb assembly including a horizontally extending sill 14 disposed between and connected to ends of a pair of vertically extending jamb members 16,18, a horizontally extending header structure 12 disposed between and connected to opposite ends of the jamb members 16,18 and vertically extending mullions disposed between the jamb members.

The applicant recites a spacing member for..... The intended use language does not positively claim the door jamb assembly nor does it positively claim the spacing member in

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combination with the door jamb assembly. The intended use recitation further does not further limit the structure of the spacing member.

Headrick discloses a body 13/14/57 having opposing surfaces; one of the surfaces 53 is capable of supporting a mullion and the other of the opposing surfaces having a contoured sill engaging surface to generally conform to a topographic configuration of the sill. See annotations on patent copy. The first portion 14 of the sill engaging surface is inclined with respect to the mullion. See figures 1-2 The second portion 13 of the sill engaging surface is parallel to the mullion. A third portion 57 of the sill engaging surface is incline with respect to the mullion supporting surface. The second portion 14 is disposed between the first and third portions .The body structure includes a laterally extending channel formed therethrough and a portion of the channel providing at least a portion of the sill engaging surface. The body structure is formed of synthetic material. See column 5, lines 32-35. The body structure is configured to be engageable with the sill structure such tat lateral movement of the spacing member relative to the sill is substantially prevented as much as applicant's structure having the same limitations and when the screw is fully tightened. Equally true is that the body structure is configured to be engageable with the sill structure such that lateral movement of the spacing member relative to the sill structure is allowed when the screw is loosened .

In view of the above, one of ordinary skill in the art would have appreciated employing the spacer between the mullion and sill in a frame assembly structure including the above imitations to adjust the height of the mullions. The surface of the mullion and the spacer is generally horizontal and so the body structure has a generally complimentary shape to the mullion .

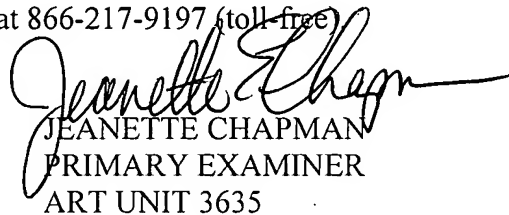
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Given the intended use language above the body structure includes a horizontally extending portion or one laterally locating structure which is configured and which may extend horizontally outward past the mullion if sufficiently narrow; no limiting structure is recited with respect to the mullion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free)

  
JEANETTE CHAPMAN  
PRIMARY EXAMINER  
ART UNIT 3635

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